

SAN FRANCISCO

PUBLIC GOLF ALLIANCE



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February 13, 2014

California Coastal Commission
Sea-Level Rise Work Group
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: San Francisco Public Golf Alliance
Comments on Draft Sea-Level Rise Policy Guidance

Dear Commission and Sea Level Rise Work Group,

Here below are the comments of the San Francisco Public Golf Alliance on the Draft Sea-Level Rise Policy Guidance.

1. Many aspects of this "Guidance" constitute "underground rulemaking", in violation of the Administrative Procedures Act (APA). Section 11342.600 of the Government Code defines "regulation" as "every rule, regulation, order, or standard of general application . . . adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." Every "regulation" is subject to the rulemaking procedures of the APA unless expressly exempted by statute. Government Code Section 11346. If a rule looks like a regulation, reads like a regulation, and acts like a regulation, it will be treated by the courts as a regulation, whether or not the issuing agency so labeled it. *State Water Resources Control Board v. Office of Administrative Law*, 12 Cal.App.4th 697 (1993). Any doubt as to the applicability of the APA should be resolved in favor of the APA. *Grier v. Kizer*, 219 Cal.App.3d 422 (1990).

The "Executive Summary" section of the Guidance, at page 12, concludes with the following disclaimer:

"Finally, this document is intended to function as guidance, not regulations. It does not govern the planning and regulatory actions that the Commission or local governments may take under the Coastal Act and subject to the applicable requirements of

the Coastal Act, the Coastal Zone Management Act, certified LCPs and other applicable laws and regulations as applied in the context of the evidence in the record for that action."
(emphasis in original)

But saying so does not make it so. The Guidance clearly seeks to establish rules and standards of general application which the Commission would require be adopted through Local Coastal Programs, or which the Commission would enforce directly in the context of acting on Coastal Development Permits. (This is underscored by the Commission's Public Review Announcement for this Guidance, dated October 14, 2013, which states that the Commission will consider the Guidance for "formal endorsement.") Some of these rules and standards are discussed below. In order to adopt such rules and standards, the Commission must comply fully with the rulemaking requirements of the APA. And of course it is in the Commission's best interest to do just that, as the APA prohibits an agency from utilizing or enforcing any guideline, criterion, bulletin, manual, instruction, order, or standard of general application, or other rule, that should have been adopted pursuant to the APA. Government Code, Section 11340.5(a).

2. At Page 5 (middle of the page), the Guidance says:

"This guidance is rooted in certain fundamental guiding principles, **many** of which derive directly from the requirements of the Coastal Act." (emphasis added).

The word "many" constitutes an admission by the drafters that some of the "guiding principles" enumerated in the draft Guidance do not derive from the requirements of the Coastal Act. To maximize clarity and minimize ambiguity, the final version of the Guidance should identify, for **each individual** principle articulated therein, which Section of the Coastal Act, and/or Regulation of the Coastal Commission, and/or other legal authority, is the source of the specific principle. Without such specific reference to authority, the conclusion will be inescapable that principles for which the Guidance cites no specific authority, are in fact without any legal authority.

3. At Page 6 of the Draft Guidance, Paragraph A.10 reads as follows:

"Maximize natural shoreline values and processes and embrace green infrastructure and living shore lines; **avoid the perpetuation of shoreline armoring.**" (emphasis added)

This element of the proposed Guidance is inconsistent with the mandate of Coastal Act Chapter 3, Section 30235, which expressly provides that shoreline armoring "shall be permitted when required":

"Section 30235. Construction altering natural shoreline.

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes **shall be permitted when required to serve coastal-dependent uses or to protect existing structures** or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible." (emphasis added)

4. Paragraph II.B.6 of the Guidance (at page 24, middle), captioned "Avoid or minimize coastal resource impacts when addressing risks to existing development," provides as follows:

"Existing coastal development should avoid or minimize impacts to coastal resources in any repairs, maintenance or renovations. Sea-level rise protection measures for existing development should be analyzed for coastal resource impacts, and any impacts should be minimized. **Renovations or redevelopment that constitutes new development** should avoid or minimize risks and protect coastal resources in accordance with guidance for new development." (emphasis added)

No citation to the Coastal Act or any other law is cited for this proposition. The Guidance is vague and uncertain on this point, because neither the Guidance nor the Coastal Act define "renovation," "redevelopment," or "redevelopment that constitutes new development". Moreover, Paragraph II.B.6 appears to be inconsistent with Coastal Act Section 30235, quoted above in paragraph 3 of this letter. .

5. The final sentence of paragraph II.B.8 (Page 25 of the Guidance, near top of page) provides as follows:

"For a new development project potentially subject to future erosion, the permit should include a 'no future seawall' deed restriction that requires property owners to waive the right to any future shoreline protection."


The Guidance cites no Coastal Act section or other legal authority for this. If there is such legal authority, it should be specifically identified. Moreover, the sentence is ambiguous: it refers alternately to a "no future seawall" deed restriction, and to

a much broader waiver of "any future shoreline protection." The sentence should be clarified on this point, to avoid uncertainty.

6. Section II.C.10 (page 25 of the Guidance, bottom third of the page), captioned "Maximize natural shoreline values and processes; avoid the perpetuation of shoreline armoring," is vague and uncertain in its use of the undefined terms "major renovations" and "redevelopment". These terms should be defined. Without citation to any provision of the Coastal Act or other authority, Section II.C.10 appears to equate "major renovations" and "redevelopment" with "new development". If there is any authority for this proposition, the authority should be cited. Moreover, the caption "avoid the perpetuation of shoreline armoring" is unsupported by any reference to the Coastal Act or other authority, and is in fact inconsistent with Coastal Act Section 30235, supra. The Guidance's purported injunction against "shoreline armoring" is not supported by Coastal Act Section 30253(3), which refers not to sea level **shoreline armoring**, but rather to "protective devices that would substantially alter natural landforms along **bluffs and cliffs**." (emphasis added)

The San Francisco Public Golf Alliance, a 6,000-plus member, non-profit, pro bono, public benefit organization, thanks you for your attention to these matters.

Respectfully submitted,


Richard Harris

San Francisco Public Golf Alliance

cc: San Francisco Planning Department
San Francisco Recreation and Parks Department
San Francisco County Counsel's Office
Pacifica City Council
Pacifica Planning Department
San Mateo County Manager's Office
San Mateo County Planning Department